

REMARKS

Reconsideration and withdrawal of the rejection of claim 17, the only rejection in this application, are respectfully requested in view of the following remarks. Claims 1, 3-9 and 11-16, all the remaining claims, have been allowed.

Claim 17 stands rejected under 35 USC 101 because the claim allegedly "is drawn to functional descriptive material recorded on a computer-readable medium." Although the Examiner correctly pointed out that the claim "normally... would be statutory," the Examiner contends that page 71 of Applicant's specification allegedly defines the computer readable medium of claim 17 as encompassing both statutory media "as well as non-statutory subject matter such as 'carrier wave'."

Reconsideration of this rejection is respectfully requested. As the Examiner correctly notes, claim 17 is directed to "a computer-readable medium." Computer readable media constitute statutory subject matter within the meaning of 35 USC 101. See, for example, section 2106.01 of the MPEP, which recites, in pertinent part:

I. FUNCTIONAL DESCRIPTIVE MATERIAL: "DATA STRUCTURES" REPRESENTING DESCRIPTIVE MATERIAL *PER SE* OR COMPUTER PROGRAMS REPRESENTING COMPUTER LISTINGS *PER SE*

Data structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. (Emphasis added.)

Here, claim 17 is directed to the steps carried out by a computer that executes the program stored on the computer-readable medium. Claim 17 thus conforms to section 2106.01 of the MPEP. Claim 17 is directed to subject matter embodied in a computer-readable medium.

Reference to page 71 of Applicant's specification is instructive. Page 71 describes the computer-readable medium as being the medium on which the program is stored:

"the program can be stored in advance in the hard disc 514 or the ROM 512 and provided to a user integrally with the computer 501, provided as a packaged medium such as the magnetic disc 531, the optical disc 532, the semiconductor memory 533 or the like, or provided from a satellite, a network or the like through a communication unit 519 to the hard disc 514" (page 71, lines 14-20).

There is no description or suggestion at page 71 that the computer-readable medium of claim 17 constitutes a "carrier wave." At best, the program mentioned at page 71 may be provided "from a satellite, a network or the like" to hard disc 514. Consequently, the program executed by the computer to perform the method defined by claim 17 is the program that is stored on the computer-readable medium, even if that program is supplied from a satellite. Since the very words of claim 17 call for "a computer-readable medium storing a program..." the claim should be interpreted consistent with the normal meaning of these words, namely, that the program executed by the computer is stored on the medium. As such, claim 17 is directed to statutory subject matter and is not directed to a carrier wave.

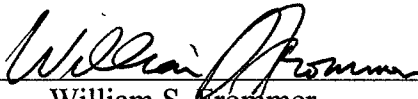
Therefore, since claim 17 conforms to section 2106.01 of the MPEP and to the Interim Guidelines for the Examination of Patentable Subject Matter, withdrawal of the rejection of claim 17 under 35 USC 101 is respectfully solicited. Claim 17 is in condition for allowance; and the Notice of Allowance of the instant application is respectfully requested.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

In view of the foregoing remarks, it is believed that all of the claims in this application are in condition for allowance and Applicant respectfully requests early passage to issue of the present application.

Respectfully submitted,

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